

ORIGINAL EXCEPTION



0000023424

BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH § 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996.

DOCKET NO. T-00000A-97-0238

**QWEST'S EXCEPTIONS AND CLARIFICATIONS TO THE ADMINISTRATIVE LAW  
JUDGE'S RECOMMENDED ORDER REGARDING QWEST'S COMPLIANCE WITH  
CHECKLIST ITEM 1**

Qwest Corporation submits its exceptions to the Administrative Law Judge's Recommended Order regarding Qwest's compliance with Checklist Item 1. In his Recommended Order, the ALJ presents proposed findings concerning 23 unresolved issues associated with the interconnection and collocation requirements of Section 271, Checklist Item 1. Although some of the proposed findings are contrary to Qwest's position, these findings reflect a fair-minded and thoughtful effort to resolve the impasse issues. Qwest, however, respectfully provides these comments concerning four issues relating to interconnection and one issue relating to collocation. Except for the recommendations relating to these issues, Qwest accepts the ALJ's rulings.

Arizona Corporation Commission

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## EXCEPTIONS

### A. Interconnection Issues

#### 1. Issue No. 5 – Whether CLECs may choose the most efficient means of interconnection, such as the use of a single point of presence (SPOP")

Qwest has agreed to allow CLECs the most efficient means of interconnection, including a single point of interconnection per LATA without restriction. As the Recommended Order notes, "there is no dispute that the SGAT provision is lawful."<sup>1</sup> There was some concern, however, that Qwest's product catalog may be inconsistent with the SGAT. To the contrary, Qwest's product catalog that is presently publicly available on the worldwide web is consistent with the language found in Qwest's SGAT. Qwest removed the language quoted at paragraph 56 of the Recommended Order from the product documentation in September 2001. A CLEC is permitted to establish a point-of interconnection at any Qwest wire center. While Qwest deleted potentially unclear language from its catalog, it never prohibited interconnection at any Qwest wire center or central office building.

#### 2. Issue No. 10 – Whether Qwest's SGAT Section 7.2.2.9.3.2 regarding the use of trunks unreasonably hinders competition

The only remaining issue here is how to charge a CLEC that is using an entrance facility for both interconnection and special access (long distance) service. CLECs seek to be able to commingle traffic on federally tariffed special access circuits and ratchet down the tariffed rate -- that is, pay special access rates for that percentage of traffic that is toll and TELRIC rates for that percentage that is local. The SGAT specifically allows CLECs to commingle traffic on these private line facilities. The question is solely one of the rate that applies. The Recommended Order proposes a ratcheting scheme that is without support from either the Act or any FCC order, impermissibly modifies a federal tariff, and jeopardizes support for universal service.

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<sup>1</sup> Recommended Order ¶ 58.

The Recommended Order appears to be based on a misunderstanding of Qwest's billing policy. The Order quotes the following explanation from AT&T:

AT&T would purchase, as it typically does a DS3 facility from Qwest. A DS3 facility contains 28 DS1 trunks. Some of the DS1 trunks would be designated as carrying special access (long distance) traffic and some would be designated as carrying local traffic (interconnection trunks). Still others might be designated as being used to access UNEs. Qwest would know which trunks are which and no traffic that should be routed over the local traffic trunk could traverse the special access trunks. Furthermore, AT&T would pay for the DS1 trunks according to their designations. Thus, the DS1s designed for interconnection would be paid for using TELRIC rates, the DS1s designated for special access would be paid for using the access rates and the DS1s used to access UNEs would be paid for using TELRIC rates.<sup>2</sup>

AT&T's assumption regarding the charges that Qwest would assess is incorrect. In this example, Qwest would charge AT&T only a DS3 channel termination charge. Qwest would not charge a channel termination for any of the 28 DS1 channels, each of which is 24-trunk capable, that rides the DS3. Further, AT&T insists upon language in section 7.2.2.9.3.2 of the SGAT that would contradict what it claims to desire here. In this case, AT&T states that it desires to keep local and exchange traffic on separate DS1s, but, at the same time, it advocates language for section 7.2.2.9.3.2 that calls for no separation at all.

Under the CLECs' proposal, endorsed by the Recommended Order, Qwest would be required to ratchet down its federally-tariffed DS3 channel termination charge to reflect the percentage of trunks within the DS3 line used for interconnection or access to UNEs. Some CLECs have proposed, for example, that if a carrier used one DS1 channel for interconnection and the remaining 27 for special access, Qwest would be required to charge the carrier 26/27ths of the federally tariffed DS3 channel termination charge and 1/27th of the LIS DS3 interconnection charge. This complex adjustment, however, would be only a part of an even

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<sup>2</sup> Recommended Order ¶ 92.

more complex adjustment that could be required. On any individual DS1 that is supporting a trunk group, some portion of each DS1 is typically associated with exchange access, another portion involves information access, and a third portion involves exchange (local) service. Due to the dynamic nature of traffic on any trunk group subject to a term like SGAT 7.2.2.9.3.2, the nature of the adjustments needed to account for these different types of traffic could be changing constantly.

Neither the Recommended Order nor the CLECs have cited any provision of the Act, an FCC order, or a Commission order that requires this complex billing obligation in order to demonstrate checklist satisfaction. Qwest is not aware that other ILECs nationwide have agreed to these terms in order to demonstrate checklist satisfaction where it has been granted. The FCC has made clear that a BOC's compliance with checklist requirements is measured against its compliance with the Act and existing FCC requirements.<sup>3</sup> Since no provision of the Act nor any FCC order requires ratcheting of rates of special access circuits to account for local traffic, there is no basis for imposing this obligation upon Qwest to meet the requirements of checklist item 1.

Moreover, if the Commission were to adopt Recommended Order and permit ratcheting, it would be impermissibly modifying a federal tariff. As the Recommended Order points out, "The special access rate is a federally tariffed rate and is higher than the cost-based rates CLECs would pay for interconnection and access to UNEs."<sup>4</sup> Adopting the ratcheting sought by CLECs

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<sup>3</sup> Memorandum Opinion and Order, *In the Matter of the Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications, d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) at ¶¶ 24-27.

<sup>4</sup> Recommended Order ¶ 88.

and endorsed by the Recommended Order is tantamount to decreasing the rates for this federally tariffed service.<sup>5</sup>

Ratcheting also would undermine support for universal service by disrupting universal service subsidies prior to the completion of FCC proceedings on this issue and would inappropriately usurp the FCC's authority. The Commission should not disrupt this important funding mechanism.

For these reasons, ratcheting has been rejected by state commissions in Colorado, Utah, Wyoming, New Mexico, and North Dakota and by administrative law judges in Oregon, Nebraska, Idaho and Montana. In a decision issued just two weeks ago in which it rejected the CLECs request for ratcheting, the Wyoming Commission cited some of the concerns that Qwest has raised here:

We agree that this is the best resolution of the issue. A pricing-based moratorium on commingling can be put in place through the use of special access pricing because the problem is not so much with the use of the circuits as with the gaming of pricing in a system in transition. We agree also that the potential for damage to universal service should not be ignored. We therefore find and conclude that it serves the public interest best to accept Qwest's proposal that language to this effect should be in the SGAT, i.e., that competitive local exchange carriers may use spare capacity on existing special access circuits for interconnection so long as they pay special access rates for the facilities.<sup>6</sup>

Finally, the issue of ratcheting becomes moot when a carrier exercises its right not to mix CLEC and IXC traffic types on flat-rated transport facilities. For this additional reason, the Commission should not order ratcheting, at least until the FCC clarifies the issue.

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<sup>5</sup> Cf. Supplemental Order Clarification, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 00-183 ¶ 7, 14 (June 2, 2000) ("*Supplemental Order Clarification*").

<sup>6</sup> *In the Matter of the Application of Qwest Corporation Regarding Relief Under Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 70000-TA-00-599, Record No. 5924 at ¶ 38 (Wyoming Pub. Svce. Commission Dec. 4, 2001).

Accordingly, Qwest respectfully requests that the Commission not impose the price ratcheting called for in the Recommended Order.

**3. Issue No. 13 – Whether Qwest's definition of tandem office switches violates Section 271**

As noted in the Recommended Order,<sup>7</sup> Qwest has revised SGAT Section 7.3.4.2.1 to recognize the FCC's symmetrical compensation rule and the tandem interconnection rate symmetry rule. Qwest also has revised its definition of Tandem Office Switches in Section 4.11.2 to read as follows:

4.11.2 “Tandem Office Switches” which are used to connect and switch trunk circuits between and among other End Office Switches. CLEC switch(es) shall be considered Tandem Office Switch(es) to the extent such switch(es) serve(s) a comparable geographic area as Qwest’s Tandem Office Switch. A fact based consideration by the Commission of geography should be used to classify any switch on a prospective basis.

With this language, Qwest actually may go beyond the ACC Staff's and the ALJ's recommendations. If a CLEC demonstrates that its switch serves a geography comparable to Qwest’s tandem, Qwest will pay reciprocal compensation as though the call were switched twice, even if the call is only functionally switched once (assuming the parties are subject to Section 251(b)(5) reciprocal compensation).

**4. Issue No. 15 – Whether Qwest should charge for Individual Call Records for Transit**

This issue involves whether in SGAT Sections 7.5.4 and 7.6.3, Qwest should charge for Individual Call Records for Transit. The Recommended Order states, “We concur with Staff that carriers should be able to charge each other for the costs they incur, which would appear to be based on the number of records processed.”<sup>8</sup> Qwest seeks one clarification to this order to

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<sup>7</sup> Recommended Order ¶ 107

<sup>8</sup> Recommended Order ¶ 116.

eliminate any ambiguity caused by the use of the word "processed." Specifically, Qwest would like it to be clear that the party that "creates" the record, as opposed to the party that "processes" records, may charge for it. Per the current SGAT, if a carrier creates records, collates records in a central file, and passes the central file to another carrier who then reprocesses the file and sends a new file of records to a third carrier, the second carrier should not charge for the sharing of the reprocessed records. The record should be closed on this issue.

**B. Collocation Issue**

**1. Issue No. 4C – Whether Qwest has created unnecessary exceptions to its compliance with timely collocation intervals**

Qwest takes exception to the recommended ruling relating to Collocation Issue 4C, which concerns the collocation provisioning intervals that apply when a CLEC has failed to forecast a collocation. Qwest's SGAT contains a 90-day collocation provisioning interval when Qwest receives a forecast at least 60 days in advance of the order. A failure to forecast extends the interval from 90 days to 120 days. The Recommended Order properly recognizes that this extension of the interval from 90 to 120 days is appropriate when a CLEC fails to submit a forecast.<sup>9</sup> This ruling is consistent with an FCC order issued November 7, 2000, that specifically granted Qwest an interim waiver from compliance with the FCC's 90-day default provisioning interval "when the carrier requesting collocation has failed to provide a timely and accurate

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<sup>9</sup> Recommended Order ¶ 140.

forecast."<sup>10</sup> The FCC's order requires timely forecasts from CLECs as a precondition for the provisioning of collocation in a 90-day time frame.<sup>11</sup>

Although the Recommended Order recognizes Qwest's right to extend the interval for unforecasted collocations, it places two restrictions on that right that the Commission should reject. First, the Order states that "Qwest must modify the interval provisions in the SGAT to reflect the FCC default limits when the waiver expires." This recommendation is inconsistent with the FCC's waiver.

The FCC's waiver arose from Qwest's petition for reconsideration of the 90-day provisioning interval established in the FCC's *Collocation Reconsideration Order*.<sup>12</sup> In granting the waiver, the FCC made clear that it would remain in effect at least until a ruling on the petitions of Qwest and other ILECs for reconsideration,<sup>13</sup> and the FCC has not yet ruled on those petitions. A potential outcome of Qwest's petition, of course, is that the FCC will modify the 90-day default interval. Under the Recommended Order, however, a 90-day interval would apply even if the FCC ultimately orders a longer interval. In other words, the Recommended Order would deny Qwest the relief it is seeking in its petition even if the FCC grants that relief. The

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<sup>10</sup> Memorandum Opinion and Order, *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 00-2528, ¶ 19 (rel. Nov. 7, 2000) ("Amended Order"). In describing this waiver as "interim," the FCC intended that the waiver would remain in effect at least until it ruled on the petitions of Qwest and other incumbents for reconsideration of the 90-day provisioning interval established in the *Collocation Reconsideration Order*. *Id.* at ¶ 20. Because the FCC has not ruled on those petitions, the waiver is still in effect.

<sup>11</sup> *Amended Order* at ¶ 19 n.36 ("Specifically, a carrier that submits an acceptable collocation application to Qwest 60 days after submitting a forecast would be entitled to a provisioning interval of no more than 90 days.")

<sup>12</sup> See Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Order Notice of Proposed Rulemaking, *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 98-147, FCC 00-297 (rel. Aug. 10, 2000) ("*Collocation Reconsideration Order*").

<sup>13</sup> *Collocation Waiver Order* ¶ 20.

SGAT should be consistent with the FCC's ultimate ruling on Qwest's petition for reconsideration. Because the ruling on this issue in the Recommended Order may be inconsistent with the FCC's eventual resolution of Qwest's petition for reconsideration, it should be rejected.

Second, the Recommended Order deviates from the FCC's waiver by requiring Qwest to provision unforecasted collocations "within 90 days when the space is available and no special conditioning is required." In granting the waiver, the only exception the FCC carved out was for a state commission to approve a *longer interval*:

We therefore will allow Qwest to increase the provisioning interval for a proposed physical collocation arrangement no more than 60 calendar days in the event a competitive LEC fails to timely and accurately forecast the arrangement, unless the state commission specifically approves a *longer interval*.<sup>14</sup>

As this language shows, the Recommended Order deviates from the FCC's order by requiring Qwest to comply with the 90-day default interval even when a CLEC has failed to submit a forecast.

In addition, this ruling in the Recommended Order incorrectly assumes that Qwest will be unaffected if it is required to provision an unforecasted collocation within 90 days when space is available. An important consequence of the waiver is that it provides CLECs with incentive to submit collocation forecasts. These forecasts are critical to Qwest's ability to plan and allocate collocation space. For this reason, the FCC has expressly permitted incumbents to "require a competitive LEC to forecast its physical collocation needs," and " . . . [to] penalize an inaccurate forecast by lengthening a collocation interval."<sup>15</sup> By carving out an unwarranted exception to the waiver, the Recommended Order would reduce the CLECs' incentive to submit forecasts. For

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<sup>14</sup> *Id.* ¶ 19 (emphasis added).

<sup>15</sup> *Reconsideration Order* at ¶ 39.

example, if a CLEC is aware that space is available in a central office, under the ALJ's recommendation, it will have little incentive to submit a forecast. Qwest's experience has been that CLECs do not provide any collocation forecasts unless they are required to forecast collocations to obtain a shortened interval; virtually no collocation forecasts have ever been provided to Qwest. Accordingly, to preserve the incentive that CLECs have under the FCC's waiver to submit forecasts, the Commission should reject the ALJ's recommended exception to the waiver.


### **CONCLUSION**

Qwest has agreed to make significant modifications to its SGAT demonstrating its legal commitment to provide Checklist Item 1 to its competitors in Arizona. Accordingly, Qwest requests that the Commission approve the Recommended Order, with the few exceptions noted here.

DATED this 17<sup>th</sup> day of December, 2001.

Respectfully submitted,

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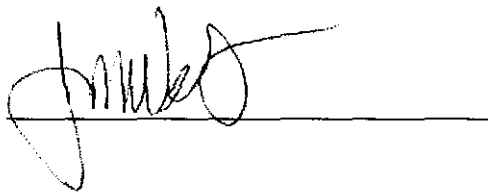
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